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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/839,065	04/20/2001	Ting Tina Ye	1001-1471101	2367
28075	7590	11/04/2004	EXAMINER	
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420			DESANTO, MATTHEW F	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/839,065

Applicant(s)

YE ET AL.

Examiner

Matthew F DeSanto

Art Unit

3763

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: _____

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: The amendment changes the scope of the claim and requires further consideration and a new search .

Continuation of 5. does NOT place the application in condition for allowance because: The examiner stated those cases as support to his interpretation of the product by process limitation. See MPEP section 2173.05 (p), 2112 and 2113 as well for further support of his interpretation. The applicant is arguing functional language "shapable length" and incorrectly stating it as a structure limitation (See paragraph 2 of the petition). The examiner would like to know what structure is the "shapable length," as well as what structure is the "thermoforming technique"? The examiner does not want the structure related to those features such as the tip, but the actually element that is the shapeable length, and the actually element that is the thermoforming technique.

The examiner understands the definition of shape and understands the structure that is being claimed, according to MPEP section 2112.01, 2114, if the claimed invention and the prior art have the same structure then they would perform the same function. The examiner applies Samson, since Samson has the same structural limitations and works in the same fashion. Samson has the ability to be flexible and maneuver through the circulatory system; it would be able to be shaped, since it would have to obtain different shapes when moving through the body. (See paper dated 02/25/03). According to the remarks made in paper dated 11/12/03 the applicant argues that the "tip can be shaped" and therefore the examiner interprets this as a functional language limitation, not an actually structure. According to MPEP section 2112.01, 2114, the examiner interprets that the prior art invention only needs to be capable of being shaped to anticipate the claim. This limitation is taught in Samson. See paper dated 02/25/03. .



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